

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTONIN RE STERLING FINANCIAL CORP.
ERISA LITIGATION

No. CV-10-0018-EFS

**ORDER PRELIMINARILY APPROVING
CLASS SETTLEMENT**

Before the Court for preliminary approval is a Settlement (the "Settlement") of this class action (the "Action") asserting claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001-1461 ("ERISA"), with respect to the Sterling Bank 401(k) Plan (the "Sterling 401(k) Plan") and the FirstBank Northwest Employee Stock Ownership Plan (the "FirstBank ESOP" or the "ESOP", and, collectively with the Sterling 401(k) Plan, the "Plan") as against Defendants Sterling Financial Corporation ("SFC"), Sterling Savings Bank ("Sterling" or the "Bank," and, collectively with SFC, the "Company"), Robert Butterfield, and Kathleen Huggins (collectively, "Defendants"). The terms of the Settlement are set out in a Stipulation of Settlement executed on February 28, 2013 (the "Stipulation"), which has been signed by Plaintiffs Philip Laue and Lynne Hammond ("Plaintiffs") and their Counsel, on behalf of the proposed Settlement Class, and Defendants (collectively with Plaintiffs, the "Parties"). Capitalized terms not

1 otherwise defined in this Order shall have the same meaning as
2 ascribed to them in the Stipulation. The "Settlement Class" is
3 defined below.

4 The Court has considered Plaintiffs' Motion for Preliminary
5 Approval of Proposed Settlement, ECF No. 102, and the Stipulation
6 attached thereto to determine, among other things, whether the
7 Settlement is sufficient to warrant the issuance of notice to Members
8 of the proposed Settlement Class. Having fully reviewed the Parties'
9 filings and the record in this matter, the Court is fully informed
10 and now enters the following Order.

11 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

12 1. **Jurisdiction.** The Court has jurisdiction over the subject
13 matter of this Action and over all Parties to this Action,
14 including all Members of the Settlement Class.

15 2. **Class Findings.** The Court preliminarily finds, for
16 purposes of the Settlement, that the requirements of the
17 Federal Rules of Civil Procedure, the United States
18 Constitution, the Rules of the Court, and any other
19 applicable law have been met as to the Settlement Class, in
20 that:

21 a. the Settlement Class is ascertainable from records
22 kept with respect to the Plan and from other
23 objective criteria, and the Members of the Settlement
24 Class are so numerous that their joinder before the
25 Court would be impracticable;

- 1 b. based on allegations in Plaintiffs' Amended
2 Consolidated Complaint (the "Complaint"), there are
3 one or more questions of fact and/or law common to
4 the Settlement Class;
- 5 c. based on allegations in the Complaint, Defendants
6 engaged in uniform conduct affecting Members of the
7 Settlement Class, and claims of Plaintiffs are
8 typical of the claims of the Settlement Class;
- 9 d. Plaintiffs will fairly and adequately protect the
10 interests of the Settlement Class, in that: (i) the
11 interests of Plaintiffs and the nature of their
12 alleged claims are consistent with those of the
13 Members of the Settlement Class; (ii) no significant
14 conflicts exist between or among Plaintiffs and the
15 Settlement Class; and (iii) Plaintiffs are
16 represented by qualified, reputable counsel, who are
17 experienced in preparing and prosecuting large,
18 complex ERISA class actions of this type; and
- 19 e. the prosecution of separate actions by individual
20 Members of the Settlement Class would create a risk
21 of: (i) inconsistent or varying adjudications as to
22 individual class members that would establish
23 incompatible standards of conduct for the parties
24 opposing the claims asserted in the Action; or (ii)
25 adjudications as to individual class members that
26 would, as a practical matter, be dispositive of the

1 interests of the other members not parties to the
2 adjudications, or substantially impair or impede
3 those persons' ability to protect their interests.

4 3. **Class Certification.**

5 a. Based on the findings set out above, the Court
6 **PRELIMINARILY CERTIFIES** the following subclass for
7 settlement purposes under Federal Rule of Civil
8 Procedure 23(b)(1) in this litigation (hereinafter
9 the "Sterling 401(k) Plan Class"):

10 All persons (except Defendants and their
11 immediate family members) who were
12 participants in or beneficiaries of the
13 Sterling 401(k) Plan at any time between
14 October 22, 2007, and February 28, 2013,
15 and whose Plan accounts included
16 investments in SFC Stock.

17 b. Further, based on the findings set out above, the
18 Court **PRELIMINARILY CERTIFIES** the following subclass
19 for settlement purposes under Federal Rule of Civil
20 Procedure 23(b)(1) in this litigation (the "FirstBank
21 ESOP Class"):

22 All persons (except Defendants and their
23 immediate family members) who were
24 participants in or beneficiaries of the
25 FirstBank ESOP at any time between October
26 22, 2007, and November 14, 2008, and whose
27 ESOP account included investments in SFC
28 Stock.

29 c. Accordingly, the Court **PRELIMINARILY CERTIFIES** the
30 following Settlement Class for settlement purposes
31 under Federal Rule of Civil Procedure 23(b)(1) in
32 this litigation:

All persons within the "FirstBank ESOP Class" defined above who held such SFC Stock in their ESOP accounts between October 22, 2007, and November 14, 2008, (the "FirstBank ESOP Class Period"), and all persons within the "Sterling 401(k) Plan Class" defined above who held SFC Stock in their Plan accounts at any time during the period of October 22, 2007, to February 28, 2013 (the "Class Period").

- d. The Court finds the Settlement Class is sufficiently well-defined and cohesive to warrant certification as a non-opt-out class under Federal Rule of Civil Procedure 23(a) and 23(b)(1). As required by Rule 23(g), the Court has considered: (i) the work Class Counsel has done in identifying or investigating potential claims in this Action; (ii) Class Counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in this Action; (iii) Class Counsel's knowledge of the applicable law and, in particular, its knowledge of ERISA as it applies to claims of the type asserted in this Action (breach of fiduciary duty claims that pertain to the Plan's investment in company stock); and (iv) the resources Class Counsel has committed to representing the class. Based on these factors, the Court finds that Class Counsel has and will continue to represent fairly and adequately the interests of the Settlement Class. Accordingly, pursuant to Rule 23(g)(2) the Court preliminarily designates Hagens

Berman Sobol Shapiro, LLP, and Harwood Feffer LLP as co-lead class counsel ("Class Counsel") with respect to the Settlement Class in this Action.

e. As set forth above, the Court finds that Plaintiffs are adequate and typical class representatives for the Settlement Class and, therefore, appoints Plaintiffs as the representatives of the Settlement Class.

f. The Court having determined preliminarily that this Action may proceed as a non-opt out class action under Rules 23(a) and 23(b)(1), Members of the Settlement Class shall be bound by any judgment concerning the Settlement in this Action, subject to the Court's final determination as to whether this Action may so proceed.

4. Preliminary Approval of Settlement. The Settlement documented in the Stipulation of Settlement is hereby **PRELIMINARILY APPROVED**, as the Court preliminarily finds that: (a) the proposed Settlement resulted from arm's-length negotiations; (b) the Stipulation of Settlement was executed only after Class Counsel had researched and investigated multiple legal and factual issues pertaining to Plaintiffs' claims; (c) there is a genuine controversy between the Parties involving Defendants' compliance with the fiduciary requirements of ERISA; (d) the Settlement appears on its face to be fair, reasonable, and adequate;

1 and (e) the Settlement evidenced by the Stipulation is
2 sufficiently fair, reasonable, and adequate to warrant
3 sending notice of the Action and the Settlement to the
4 Settlement Class.

5. **Fairness Hearing.** A hearing (the "Fairness Hearing")
6 pursuant to Rule 23(e) is hereby **SET** on **July 11, 2013**, at
7 **2:00 p.m.** at the Thomas S. Foley U.S. Courthouse, 920 West
8 Riverside Avenue, Spokane, Washington, 99201, to determine
9 finally, among other things:

- 10 a. whether the Settlement should be approved as fair,
11 reasonable, and adequate;
- 12 b. whether the Settlement Class satisfies the
13 requirements of Rule 23, and should be finally
14 certified as preliminarily found by the Court;
- 15 c. whether the litigation should be dismissed with
16 prejudice pursuant to the terms of the Stipulation;
- 17 d. whether the Final Approval Order attached to the
18 Stipulation should be entered, and whether the
19 Releasees should be released of and from the Released
20 Claims, as provided in the Stipulation;
- 21 e. whether the notice and notice methodology implemented
22 pursuant to the Stipulation (i) were reasonably
23 calculated, under the circumstances, to apprise
24 Members of the Settlement Class of the pendency of
25 the litigation, their right to object to the
26 Settlement, and their right to appear at the Fairness

1 Hearing; (ii) were reasonable and constituted due,
2 adequate, and sufficient notice to all persons
3 entitled to notice; and (iii) met all applicable
4 requirements of the Rules, and any other applicable
5 law;

- 6 f. whether Class Counsel adequately represents the
7 Settlement Class for purposes of entering into and
8 implementing the Stipulation as required by Rule
9 23(g) and as preliminarily found by the Court;
10 g. whether the proposed Plan of Allocation of the Net
11 Settlement Fund is fair, reasonable, and adequate,
12 and should be approved by the Court;
13 h. whether the Settlement has been negotiated at arm's
14 length by Class Counsel on behalf of the Plan and the
15 Settlement Class, whether Plaintiffs have acted
16 independently, whether Plaintiffs' interests are
17 identical to the interests of the Plan and the
18 Settlement Class, and whether the negotiations and
19 consummation of the Settlement by Plaintiffs on
20 behalf of the Plan and the Settlement Class does not
21 constitute "prohibited transactions" as defined by
22 ERISA §§ 406(a) and/or (b) qualify for a class
23 exemption from the prohibited transaction rules,
24 including Prohibited Transaction Exemption 2003-39;

- 1 i. whether the application for attorneys' fees and
- 2 expenses to be filed by Class Counsel should be
- 3 approved;
- 4 j. whether case contribution awards should be awarded to
- 5 Plaintiffs; and
- 6 k. any other issues necessary for approval of the
- 7 Settlement.

8 6. **Class Notice.** The Parties have presented to the Court a
9 proposed Class Notice, consisting of a Postcard Notice, a
10 Long Form Notice, and a Summary Notice, which are appended
11 to the Stipulation as Exhibits 2, 3, and 4. The Court
12 **APPROVES** the form and content of the Class Notice finding
13 that it fairly and adequately: (1) describes the terms and
14 effect of the Stipulation and of the Settlement; (2) gives
15 notice to the Settlement Class of the time and place of the
16 Fairness Hearing; and (3) describes how the recipients of
17 the Class Notice may object to approval of the Settlement.
18 The Parties have proposed the following manner of
19 communicating the notice to Members of the Settlement
20 Class, and the Court finds that such proposed manner is
21 adequate, and directs that Plaintiffs shall:

- 22 a. by no later than 60 days before the Fairness Hearing,
23 cause the Postcard Notice, with such non-substantive
24 modifications thereto as may be agreed upon by the
25 Parties, to be disseminated pursuant to the
26 Stipulation, to the last known address of each Member

of the Settlement Class who can be identified by reasonable effort;

- b. by no later than 60 days before the Fairness Hearing, cause the Long Form Notice to be published to the website identified in the Postcard Notice; and
 - c. by no later than 60 days before the Fairness Hearing, cause the Summary Notice to be electronically published on the Business Wire.

At or before the Fairness Hearing, Class Counsel shall file with the Court a proof of timely compliance with the foregoing mailing and publication requirements.

7. Objections to Settlement.

- a. "Objector" shall mean any Member of the Settlement Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to the Plan of Allocation, to any term of the Stipulation of Settlement, to the proposed case contribution awards, or to the proposed award of attorney fees and expenses.
 - b. Any Objector must file with the Court a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that such Objector wishes to bring to the Court's attention or introduce in support of such objection. Any

1 objection must be signed by the Settlement Class
2 Member.

3 c. The Objector must also mail the objection and all
4 supporting law and/or evidence to counsel for the
5 Parties, as stated below. The addresses for filing
6 objections with the Court and service on counsel are
7 as follows:

8 **THE COURT**

9 United States District Court
Clerk's Office
Re: Cause No. CV-10-0018-EFS
P.O. Box 1493
Spokane, WA 99210

12 **PLAINTIFFS' COUNSEL**

13 Andrew Volk
Hagens Berman
1918 Eighth Ave.
Suite 3300
Seattle, WA 98101

15 **DEFENDANTS' COUNSEL**

16 H. Douglas Hinson
Alston & Bird, LLP
950 F St. NW
Washington, DC 20004

18 d. The Objector, or, if represented by counsel, his,
19 her, or its counsel, must both effect service of the
20 objection on counsel listed above and file the
21 objection with the Court **by no later than June 27,**
22 **2013.** Any Member of the Settlement Class or other
23 person who does not timely file and serve a written
24 objection complying with the terms of this paragraph
25 shall be deemed to have waived, and shall be
26

1 foreclosed from raising, any objection to the
2 Settlement and any untimely objection shall be
3 barred.

4 8. **Appearance at Fairness Hearing.** An Objector who files and
5 serves a timely, written objection in accordance with the
6 paragraph above may also appear at the Fairness Hearing,
7 either in person or through counsel retained at the
8 Objector's expense. Objectors or their counsel intending
9 to appear at the Fairness Hearing must effect service of a
10 "Notice of Intention to Appear" setting forth, among other
11 things, the name, address, and telephone number of the
12 Objector (and, if applicable, the name, address, and
13 telephone number of the Objector's attorney) on counsel
14 identified above and file it with the Court **by no later**
15 **than June 27, 2013.** Any Objector who does not timely file
16 and serve a "Notice of Intention to Appear" in accordance
17 with this paragraph shall not be permitted to appear at the
18 Fairness Hearing, except for good cause shown. The
19 Parties' counsel shall promptly furnish each other with
20 copies of any and all objections that come into their
21 possession.

22 9. **Response to Objectors.** The Parties shall file their
23 written response(s) to any Objector with the Court and
24 mail a copy of the response to the Objector, or, if
25 represented, to the Objector's counsel, **by no later than**
26 **July 4, 2013.**

1 10. **Compliance with Class Action Fairness Act.** By no later
2 than July 1, 2013, Defendants shall file with the Court
3 proof of compliance with the Class Action Fairness Act of
4 2005, as specified in 28 U.S.C. § 1715 and paragraph 2 of
5 the Stipulation.

6 11. **Notice Expenses.** Reasonable expenses of effectuating Class
7 Notice shall be paid out of the Settlement Fund.

8 12. **Fees and Expenses Incurred by the Independent Fiduciary and**
9 **Settlement Administrator.** As stipulated by the parties,
10 the Plan's fiduciaries have retained or will retain an
11 Independent Fiduciary for the purpose of evaluating the
12 Settlement to determine whether to authorize the Settlement
13 on behalf of the Plan. Defendants have caused or will
14 cause to be paid all fees and expenses incurred by the
15 Independent Fiduciary (including fees and expenses incurred
16 by consultants, attorneys, and other professionals retained
17 or employed by the Independent Fiduciary) in the course of
18 evaluating and authorizing the Settlement on behalf of the
19 Plan. These Independent Fiduciary Fees will not be paid
20 out of the Settlement Fund. The expenses incurred by the
21 Settlement Administrator in administering the Settlement
22 and allocating the Settlement Fund pursuant to the Plan of
23 allocation approved by the Court shall be paid out of the
24 Settlement Fund.

25 13. **Application for Attorneys' Fees.** Any application by Class
26 Counsel for attorneys' fees and reimbursement of expenses,

1 for a case contribution award to the Plaintiffs, and all
2 papers in support thereof, shall be filed with the Court
3 and served on all counsel of record **by no later than June**
4 **13, 2013.**

5 **14. Motion for Final Approval of Settlement and Plan of**

6 **Allocation.** Class Counsel shall file with the Court a

7 motion for entry of the Final Approval Order and approval
8 of the Plan of Allocation **by no later than June 13, 2013.**

9 **15. Injunction.** Pending final determination of whether the

10 Settlement should be approved, all Members of the
11 Settlement Class and the Plan are each hereby **BARRED AND**
12 **ENJOINED** from instituting or prosecuting any action that
13 asserts any Released Claim against any Releasees.

14 **16. Termination of Settlement.** If the Settlement is terminated
15 in accordance with the Stipulation of Settlement or does
16 not become Final under the terms of the Stipulation of
17 Settlement for any other reason, this Order and all Class
18 Findings shall become null and void, and shall be without
19 prejudice to the rights of the Parties, all of whom shall
20 be restored to their respective positions existing
21 immediately before this Court entered this Order.

22 **17. Use of Order.** In the event this Order becomes of no force
23 or effect, no part of it shall be construed or used as an
24 admission, concession, or declaration by or against
25 Defendants of any fault, wrongdoing, breach, or liability,
26 nor shall the Order be construed or used as an admission,

concession, or declaration by or against Plaintiffs or the Settlement Class that their claims lack merit or that the relief requested in the Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have.

18. **Continuance of Hearing.** The Court reserves the right to
continue the Fairness Hearing without further written
notice.

IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide copies to all counsel.

DATED this 29th day of March 2013.

s/ Edward F. Shea
EDWARD F. SHEA
Senior United States District Judge